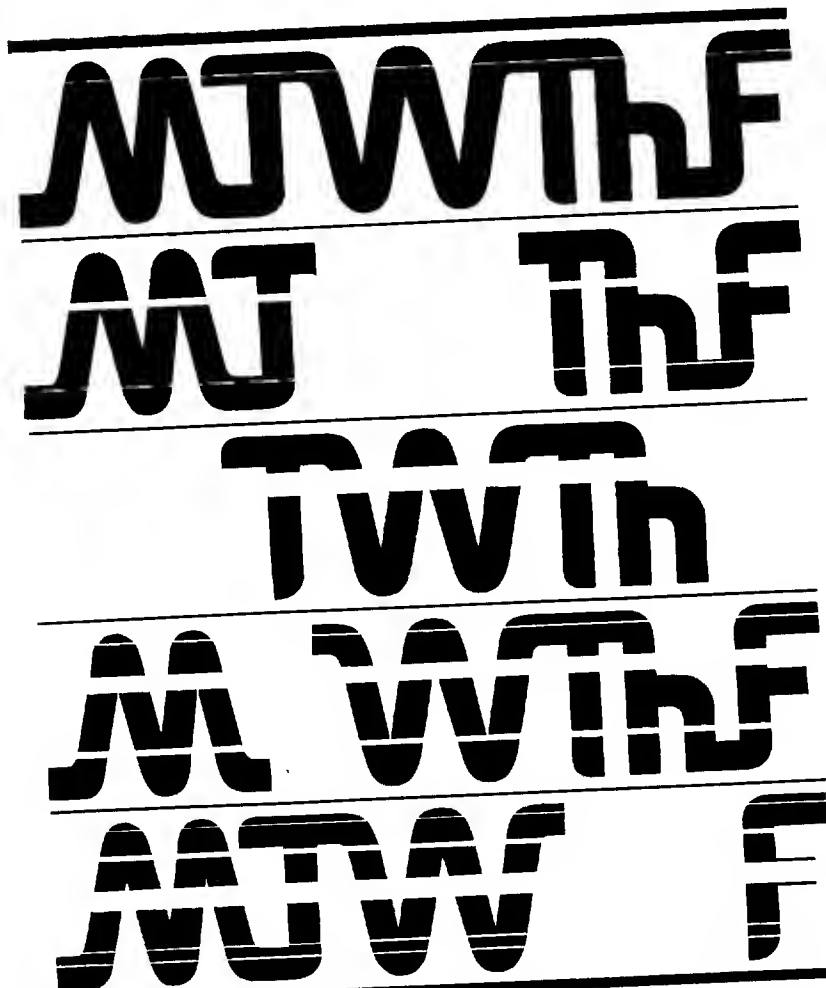


PUBLIC LAW 95-390

The Federal Employees Flexible and Compressed Work Schedules Act of 1978



An overview of the experimental flexible and compressed work
schedules program for Federal agencies

Office of Personnel Management

PP-5 8/79

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THE FEDERAL EMPLOYEES FLEXIBLE AND COMPRESSED WORK SCHEDULES ACT OF 1978:
AN OVERVIEW OF THE EXPERIMENTAL PROGRAM FOR FEDERAL AGENCIES

Prepared by: Tom Cowley and Carolyn Harmon

Alternative Work Schedules Experimental Program
Chief: Seymour Gettman
Program Manager: James J. Hesling

Office of Program Planning and Development
Compensation Planning and Pay Programs
Compensation Group
August 1979
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I. INTRODUCTION

A. Purpose of the Booklet

This booklet is designed to describe the provisions of Public Law 95-390, the "Federal Employees Flexible and Compressed Work Schedules Act of 1978," enacted September 29, 1978. It provides some examples of possible flexible and compressed work schedule models and clarifies the objectives and general framework of the 3-year alternative work schedules experimental program in the Federal Government. It is primarily intended for use by agency officials and union representatives who must take those steps which are necessary to initiate the planning and negotiating process for experimental site selection and the possible form of alternative work schedule to be tested. (Note: In organizations where a union does not exist, employees should be involved in the planning and implementation process).

The information contained in this booklet will answer some questions about the experimental program; however, the booklet does not describe the entire program in detail. For those agencies and agency activities which have decided on participation in the experimental program the Office of Personnel Management (OPM) will have available materials that describe the step-by-step introduction of a flexible or compressed work schedule. The OPM will publish regulations and instructions (after appropriate consultation) to deal with the various possible scheduling and premium pay situations which may arise under the Act. The master plan for experimentation, which is required by the Act, will provide more specific guidelines concerning the research design and methodology for evaluating the impact of alternative work schedules in terms of the factors specified by the law.

Specific questions about the experimental program should be directed to the local OPM office in your area.

B. General Background Information

The Federal Employees Flexible and Compressed Work Schedules Act of 1978, Public Law 95-390, mandates a 3-year period of controlled experimentation with the use of flexible and compressed work schedules for employees of agencies in the Executive branch of the United States Government. The purpose of the experimentation is to determine the impacts - both positive and negative - which these alternatives to traditional work schedules may have on: (1) efficiency of Government operations; (2) service to the public; (3) mass transit facilities; (4) energy consumption; (5) increased job opportunities; and (6) the quality of life for individuals and families.

The experimentation is made possible by the temporary modification of certain premium pay and scheduling provisions of title 5 United States Code and the overtime pay provisions of the Fair Labor Standards Act (FLSA). This suspension is applicable only to those agencies or work units participating in an approved test program; all permanent provisions of title 5 and the FLSA remain in effect for non-participating agency activities and employees.

C. Flexible Work Schedules

Flexible work schedules, popularly called flexitime, refer to a variety of arrangements in which fixed times of arrival and departure are replaced by a working day composed of two different types of time - core time and flexible time. Core time is the designated period during which all employees must be present. Flexible time is designated as part of the schedule of working hours within which employees may choose their time of arrival at and departure from the work site within limits consistent with the duties and requirements of their position. The only other requirement of flexitime is that employees must account for the basic work requirement. The basic work requirement is the number of hours, excluding overtime hours, which an employee is required to work or to otherwise account for by an appropriate form of leave. For example, a full-time employee is required to work 40 hours a week or 80 hours every two weeks. A part-time employee might be employed under an appointment which requires the employee to work 25 hours a week, or perhaps, 30 hours every two weeks.

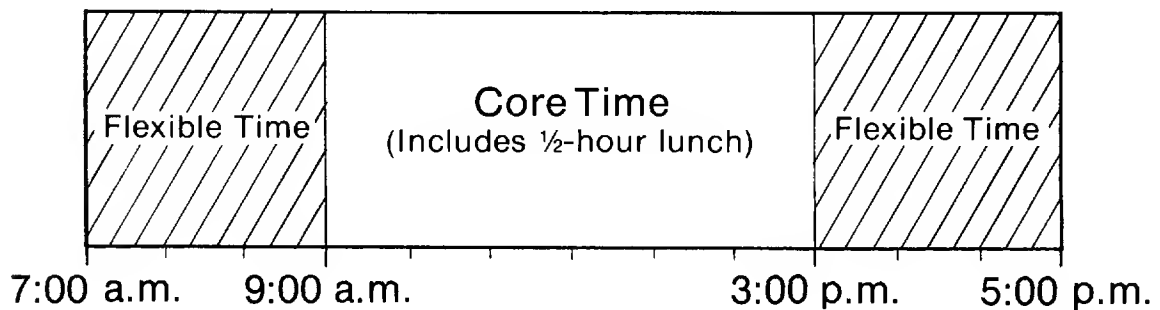
Flexitour and gliding schedules, in which employees work 8 hours each day but may vary their arrival and departure times with or without prior approval, have been used by Federal agencies since 1972. The new law has made possible the testing of more sophisticated flexitime schedules by introducing the concept of credit hours. Credit hours are any hours of work in excess of the basic work requirement that an employee elects to work on a given workday or in a given workweek in order to shorten the length of another workday or workweek at a later point. For instance, an employee could work 10 hours on one day in order to shorten the length of a subsequent workday, without gaining entitlement to overtime pay; or an employee could choose to work 50 hours in a particular workweek so as to gain the advantage of a shorter workweek of 30 hours later on.

The following models illustrate typical flexitime configurations which agencies may wish to consider; they are provided as examples and do not exhaust the possibilities. Since flexible schedules offer almost unlimited degrees of flexibility the following models should be used to stimulate your thinking and to help you devise other schedules which may be better tailored to accommodate to particular organization needs, mission requirements and the wishes of employees.

(1) Flexitour/Modified Flexitour

In the following example 7:00 a.m. and 5:00 p.m. represent the earliest time an employee may begin work and the latest time an employee may end work under this program. The employee may select a starting time between 7:00 a.m. and 9:00 a.m.; however, all employees must be present between 9:00 a.m. and 3:00 p.m.

Flexitour/Modified Flexitour



Flexitour

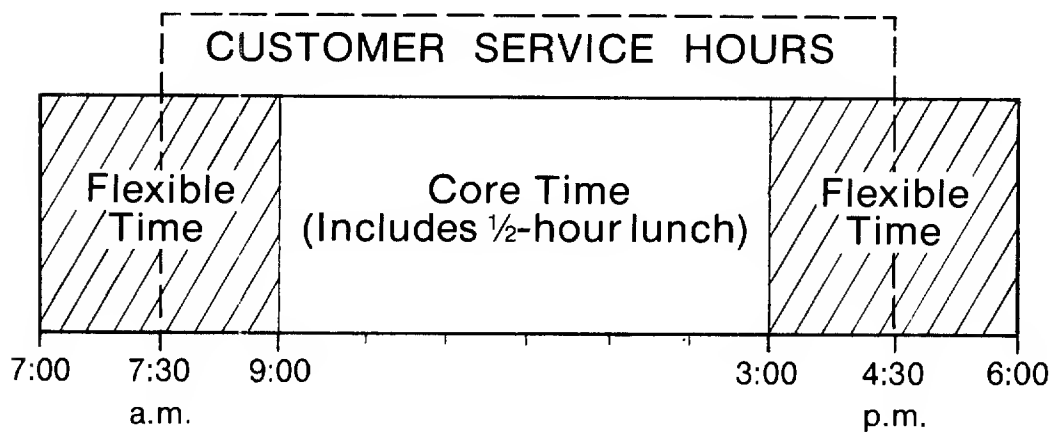
- employee preselects starting time
- may select new schedule at time intervals provided by program

Modified Flexitour

- same as above but schedule may be modified with prior notification and approval of supervisor

(2) Gliding Schedule/Modified Gliding Schedule

Gliding/Modified Gliding



Gliding Schedule

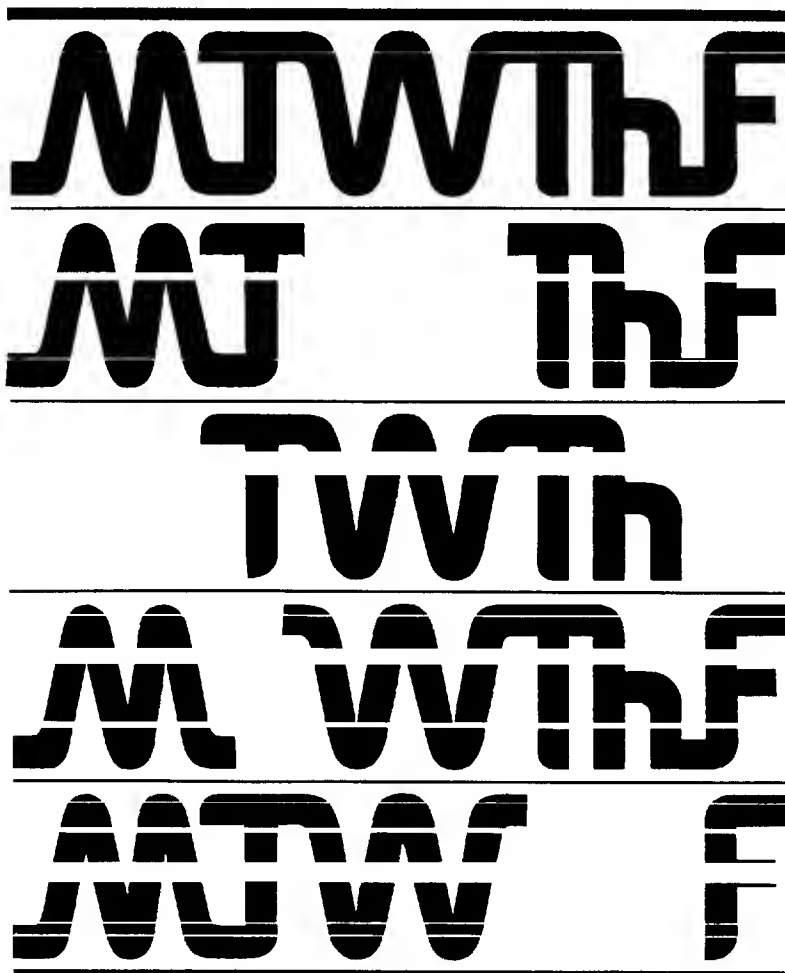
- within flexible bands, employees may vary starting time without prior notification or approval of the supervisor

Modified Gliding Schedule

- 9-hour customer service band established
- employees may vary starting time but must insure minimum coverage level is maintained during customer service hours

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 - (4) Protection of the Public Interest

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- A. Basic Research Considerations Under the Act
- B. Research and Data Collection Requirements
- C. Implementation Procedures
 - (1) Project Director
 - (2) On-site Research Coordinator

II. CONGRESSIONAL FINDINGS AND PRESIDENTIAL INTENT

A. Basic Finding

Public Law 95-390 is premised on Congress' finding that "new trends in the usage of 4-day workweeks, flexible work hours, and other variations in workday and workweek schedules in the private sector appear to show sufficient promise to warrant carefully designed, controlled, and evaluated experimentation by Federal agencies over a 3-year period to determine whether and in what situations such varied work schedules can be successfully used by Federal agencies on a permanent basis."

B. Potential Advantages

Although experience with flexible and compressed work schedules suggests that the benefits outweigh their costs and disadvantages, President Carter noted in signing the Act that "while the advantages appear to be substantial, these schedules have not yet been tested within the full range of environments that characterize Federal employment. Therefore, before making a decision to amend Federal law permanently, this legislation wisely establishes an experimental period of 3 years during which we can evaluate various innovations in a large number of agencies."

Flexible work schedules can benefit organizations in a number of ways. A 1977 General Accounting Office survey of Federal organizations that had introduced flexitime programs found that 71 percent of the agencies surveyed reported increased productivity; 71 percent reported decreased short-term leave use; and 82 percent reported decreased tardiness. Flexible schedules also have the potential for increasing the number of hours agencies can serve the public. In signing the Act, President Carter stated, "We expect that some Federal agencies will remain open to serve the public for a greater number of hours each day by using flexible time schedules."

Testimony and other information presented to Congress showed that flexible hours can also have a positive impact on traffic congestion by shifting commuters out of the peak rush hour periods, saving gasoline, and possibly decreasing urban air pollution caused by idling cars. Public transit may be a more appealing option, if employees are free to begin work when they arrive rather than having to wait 20 or 30 minutes to begin their fixed scheduled hours. Compressed work schedules can also offer employees larger blocks of leisure time and the advantage of reducing their commuting time, driving and parking costs. For organizations it can mean scheduling the workforce to better handle the workload.

Virtually every organization that has introduced a flexitime program has reported improvements in employee morale. Under flexitime, employees gain added control over their lives. They can accommodate the demands of their personal lives with their work schedules. Working parents may be able to arrange their work schedules so as to minimize the time and expense involved in keeping their children in child care centers. Employees may also find that they can participate more in civic and community activities or pursue educational opportunities more easily.

C. Some Potential Problem Areas

Despite the advantages of flexible and compressed work schedules they do have some drawbacks and will present problems and challenges for managers and supervisors. Under flexitime, scheduling and planning the work flow can become more demanding. In addition, since employees will not necessarily be present when supervisors are on duty, managers will be challenged to plan the work and develop better ways to measure the effectiveness of their work units. There may also be administrative problems with time keeping. Additional energy may also be needed to heat and cool buildings for the additional hours of operation.

Under compressed work schedules, employees may find the work days too long and strenuous and may find that the longer hours can cause family scheduling problems. Because these costs and benefits must be carefully weighed, there must be well designed and monitored evaluation of flexible and compressed work schedules, as discussed in succeeding paragraphs in this booklet.

III. PROVISIONS OF PUBLIC LAW 95-390

A. The Role of the Office of Personnel Management

The Act mandates that the Office of Personnel Management establish and manage a program which provides for the conduct of experiments with flexible and compressed work schedules in Federal agencies during a 3-year period. The program will go into effect on March 29, 1979, 180 days after October 1, 1978, as specified in the Act. On or after this date, Federal agencies may experiment with alternative work schedules described in Section I of the booklet. These experiments must comply with regulations established by OPM and must be conducted within the framework and guidelines of the master plan. At the end of two and one-half years after the effective date of the law, OPM is required to report the results of the experiments to the President and Congress and to recommend whether or not permanent modifications of title 5 of the United States Code and Fair Labor Standards Act should be enacted. At the end of 3 years, OPM is required to submit a final report to the President and Congress.

The Act specifies that OPM must establish a master plan to carefully evaluate alternative work schedule arrangements. As specified by the Act the master plan:

shall contain guidelines and criteria by which the Commission [OPM] will study and evaluate experiments conducted under . . . this Act. Such master plan shall provide for the study and evaluation of experiments within a sample of organizations of different size, geographic location, and functions and activities, sufficient to insure adequate evaluation of the impact of varied work schedules on:

- 1) the efficiency of Government operations;
- 2) mass transit facilities and traffic;
- 3) levels of energy consumption;
- 4) service to the public;
- 5) increased opportunities for full-time and part-time employment; and
- 6) individuals and families generally.

In addition to establishing the master plan, OPM will promulgate regulations to deal with the complex variations in scheduling and premium pay situations which will become possible under the Act. The OPM will also provide educational material and technical assistance to agencies participating in the experimental program.

B. Participation by Federal Agencies

The Act allows each agency to conduct one or more experiments; there are no limits on the number of experiments which may be conducted by an agency during the 3-year experimental period. While the law does not require each agency to conduct experiments with alternative work schedules, the Act does require a sample of agencies with a "sufficient number of positions throughout the Executive branch, and a sufficient range of worktime alternatives, as to provide an adequate basis on which to evaluate the effectiveness and desirability of permanently maintaining flexible or compressed work schedules within the Executive branch." In order to ensure that an adequate number of agencies conducts tests of flexible and compressed work schedules, the Act gives OPM authority to require selected agencies to participate in the experiments, in accordance with all applicable provisions of the Act, if this is necessary to ensure the overall quality of the evaluation.

Because of the widespread interest in alternative work schedules among employees and because managers will be able to tailor schedules to better fit particular work situations requiring innovative schedules, it is anticipated that there will be a large number of agencies and agency activities submitting proposals to conduct experiments, which will make

it unnecessary for OPM to invoke its authority to require participation. However, agencies should be prepared to work with the staff of OPM to modify proposals, or if the need arises, to study the feasibility of undertaking an experiment in order to insure a representative sample of organizations of different size, activity and function, occupational mix, and geographic location.

The need to test different types of alternative work schedules in diverse work environments was recognized by the Congress. The joint report of the Senate Committees on Governmental Affairs and Human Resources states that "the committees envision a broad-based experiment touching several hundred units of the Federal Government in order to derive some empirically useful data about flexible work schedules. Experiments with units performing diverse functions are essential; flexible or compressed schedules may be brilliantly successful in certain settings and a dismal failure in others, and a limited experiment could produce results that were seriously skewed."

Agencies that have not previously initiated flexitime experiments should consider launching an experimental program with any of the various work schedules made possible by the Act. Agencies with flexitime programs already established may wish to modify them to allow for even greater flexibility. For example, an agency with a gliding schedule program may wish to introduce the credit hour option to allow employees to "bank" hours from day to day or week to week, in order to vary the length of a subsequent workday or workweek.

C. Legal Protections

The primary purpose of the Act is to permit experimentation with all forms of flexible and compressed work schedules without requiring the Government to pay prohibitively expensive overtime payments for the same basic work requirement. In order to accomplish this purpose, the Act modifies premium pay and scheduling provisions of title 5, United States Code and the FLSA. However, these provisions of law are suspended only for purposes of allowing experiments to be conducted and are not intended to deprive employees of presently existing benefits.

1. Protection of Premium Pay and Holiday Benefits

The provisions of the Act preserve the rights of employees participating in approved experiments to all existing holiday and other premium pay benefits. For example, hours of work in excess of 8 in a day or 40 in a week, officially ordered in advance in a flexible schedule are considered overtime hours. In flexitime programs overtime pay will continue to be paid for all overtime work ordered in advance by management.

In compressed work schedule programs overtime will be paid for all hours of work in excess of the basic work requirement. In addition, General Schedule employees will continue to be entitled to shift differential under flexitime programs when core time falls between the hours of 6 p.m. and 6 a.m., or where the employee does not have the opportunity to complete eight work hours between 6 a.m. and 6 p.m. Federal Wage System employees will be paid night differential when all or a majority of hours in such a schedule for any day fall between the hours specified in section 5343(f) of title 5, United States Code. For example, in the case of a General Schedule employee, if the flexible work schedule is established from 11 a.m. to 11 p.m. with core time between 2 p.m. and 6 p.m., the maximum number of hours which the employee can work prior to 6 p.m. is less than eight (i.e., 7 hours). Accordingly, the employee is entitled to night-shift differential for 1 hour worked between 6 p.m. and 11 p.m. since 1 hour must be worked during the night-shift period to complete an 8-hour day. If an agency believes that it is in the best interest of accomplishing its mission to establish such a work schedule, then it must recognize the increased payroll costs which will be incurred due to the payment of night-shift differential.

In addition to protection of overtime pay and night pay, holiday benefits, holiday pay and Sunday pay are also protected. For employees on flexible schedules, the employee shall be entitled to 8 hours pay for any day on which an agency is closed by Executive order or for a legal public holiday. For employees on compressed schedules, employees shall be entitled to the same pay for that day as for a day on which an ordinary day's work is performed.

Employees required to work on a holiday or a Sunday are entitled to holiday pay or Sunday pay, as appropriate, under the permanent provisions of title 5, United States Code.

2. Protection of Employees Against Coercion

For employees participating in flexible work schedule experiments, there are specific protections against intimidating, threatening, coercing, or interfering with an employee's right to elect an arrival or departure time, to work or not work credit hours, or to request compensatory time off in lieu of overtime pay. For non-unionized employees participating in compressed work schedule experiments, the Act prohibits coercing any employee's vote as to whether or not to be included in an experiment. It also prohibits interference with an employee's right to request exclusion from a compressed work schedule experiment on the basis of personal hardship. Besides the specific protections provided by the Act, employees will continue to retain their right to initiate action in court for alleged violations of the Fair Labor Standards Act.

3. Preservation of the Collective Bargaining Process

Public Law 95-390 also preserves the collective bargaining process in circumstances where a union has exclusive recognition and management and/or the union want to introduce flexible or compressed work schedules. Where a union does have exclusive recognition, negotiations regarding

the introduction of the schedule authorized by the law, must be in accordance with the substantive provisions of the Act and applicable labor management relations policies. However, an agency and a union may not enter into an agreement that contains requirements to pay overtime which conflict with the provisions of the Act.

4. Protection of the Public Interest and Efficiency of Government Operations

The Act also protects the public interest and the efficiency of Government operations by insuring that OPM or the head of any agency may terminate an alternative work schedule experiment (subject to the terms of any written agreement under section 302(a) of the Act) if it disrupts agency operations or increases costs. For each experimental program the Act provides that agency heads may restrict the employees' choice of arrival and departure times, the use of credit hours, or may exclude any employee or group of employees from the experiment, if necessary, to accomplish mission requirements.

IV. CONDUCT OF THE EXPERIMENTS

A. Basic Research Considerations Under the Act

The joint efforts of agencies and OPM are necessary to carry out the intent of the Act. Only careful, systematic and controlled evaluation of flexible and compressed work schedules will provide answers to the key questions regarding the impact of these schedules on efficiency of Government operations, mass transit and traffic, energy consumption, service to the public, opportunities for full-time and part-time employment, and the quality of life for individuals and families.

In particular, we need to measure the effect of these schedules on work unit performance and costs, on management tasks, on labor-management relations, on further organizational change, on gains and losses in service to the public, on commuting and public transit, on energy gains and losses from different transportation and building use patterns, on new entry into the labor force, on gains or losses in jobs offered, and on personal and home life.

Of particular interest, is the question of whether one type of flexible or compressed work schedule produces different results from another type of schedule. We need to know if particular schedules work better in some work settings than others.

In order to perform the evaluation, data must be collected by participating work units on their experiences with an alternative work schedule, with assistance and guidelines from OPM. These data will be analyzed and will form the basis for OPM's report to Congress and the President. Standard forms for data collection will be provided by OPM.

Agencies that desire to participate in the experiment will be required to notify OPM of their intent. This will enable OPM to ensure that a large and diverse enough sample of work units will be participating. Work units will be asked to begin their alternative work schedules very soon after the Act becomes effective on March 29, 1979. All experiments must be underway by September 30, 1979.

B. Data Collection Requirements

To be of most use to Federal managers, many of the effects of flexible and compressed work schedules need to be measured at the level of the work unit where particular functions and activities are carried out. Data will be collected from a variety of sources. Some data will be archival hard data which is routinely obtained by work units, such as turnover and overtime cost data. Other data will be collected from questionnaires distributed to employees and supervisors, such as commuting data and management task data. In addition, the official responsible for the alternative work schedules experiment will need to provide descriptive information on participating work units.

In order to measure the effects of flexible and compressed work schedules, baseline data will be required on the operation of the work unit prior to the implementation of an alternative work schedule. Some of the same variables will continue to be measured throughout the experimental period. Some work units which do not adopt any alternative work schedule will also need to be included in the evaluation so that comparisons can be made between user and nonuser experiences.

C. Implementation Procedures

(1) Project Director

The experience of most successful users of flexible schedules suggests that the method by which flexitime is introduced has a significant impact on the likelihood that the change in schedules will be successful. One important feature in most successful programs is the appointment of a Project Director who plans, coordinates, and oversees the implementation of a flexible or compressed work schedule program. Therefore, OPM strongly advocates this approach to agencies wishing to establish experimental programs. Steps taken by the Project Director, usually with the assistance of a planning committee, include: (a) acquiring information about alternative work schedules; (b) ensuring a thorough organizational analysis; (c) planning the parameters of operating procedures for the program; (d) coordinating with all affected parties; (e) communicating information about the proposed work schedule program to supervisors and employees; and (f) providing for evaluation of the experiment. More specific information about the role and activities of the Project Director will be provided in future OPM publications.

(2) On-Site Research Coordinator

Since the Act places considerable emphasis upon evaluation of alternative work schedule programs, proper collection, analysis, and interpretation of data is essential. Analysis of this raw data must take into account any changes at the work site that take place during the experiment and which may have an impact on the data apart from the impact that the alternative work schedule is having. To capture this information it is necessary for each site to designate an On-site Research Coordinator. This person will be responsible for insuring an adequate data collection system, for forwarding raw data to OPM and for keeping a log of significant events that may have an impact on the data generated (e.g., a flu epidemic with its impact on usage of sick leave).

While the duties of the Project Director and On-site Research Coordinator demand sustained attention for short periods of time, they will not require a great deal of time for any substantial period. This means that these duties can be assumed by agency staff members along with regular duties.

Office of Personnel Management guidance, training and instructional materials will be provided to Project Directors and On-site Research Coordinators to minimize the demands on their time generated by this project and to facilitate implementation and evaluation of experiments.

I. INTRODUCTION

A. Purpose of the Booklet

This booklet is designed to describe the provisions of Public Law 95-390, the "Federal Employees Flexible and Compressed Work Schedules Act of 1978," enacted September 29, 1978. It provides some examples of possible flexible and compressed work schedule models and clarifies the objectives and general framework of the 3-year alternative work schedules experimental program in the Federal Government. It is primarily intended for use by agency officials and union representatives who must take those steps which are necessary to initiate the planning and negotiating process for experimental site selection and the possible form of alternative work schedule to be tested. (Note: In organizations where a union does not exist, employees should be involved in the planning and implementation process).

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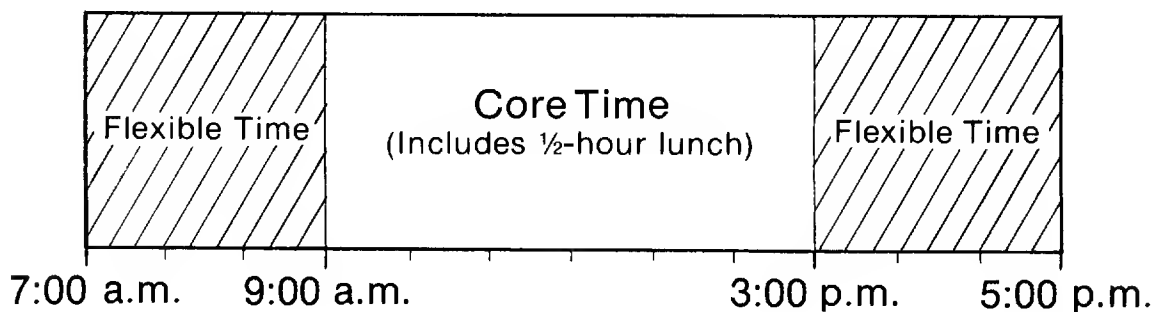
Flexitour and gliding schedules, in which employees work 8 hours each day but may vary their arrival and departure times with or without prior approval, have been used by Federal agencies since 1972. The new law has made possible the testing of more sophisticated flexitime schedules by introducing the concept of credit hours. Credit hours are any hours of work in excess of the basic work requirement that an employee elects to work on a given workday or in a given workweek in order to shorten the length of another workday or workweek at a later point. For instance, an employee could work 10 hours on one day in order to shorten the length of a subsequent workday, without gaining entitlement to overtime pay; or an employee could choose to work 50 hours in a particular workweek so as to gain the advantage of a shorter workweek of 30 hours later on.

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Flexitour/Modified Flexitour



Flexitour

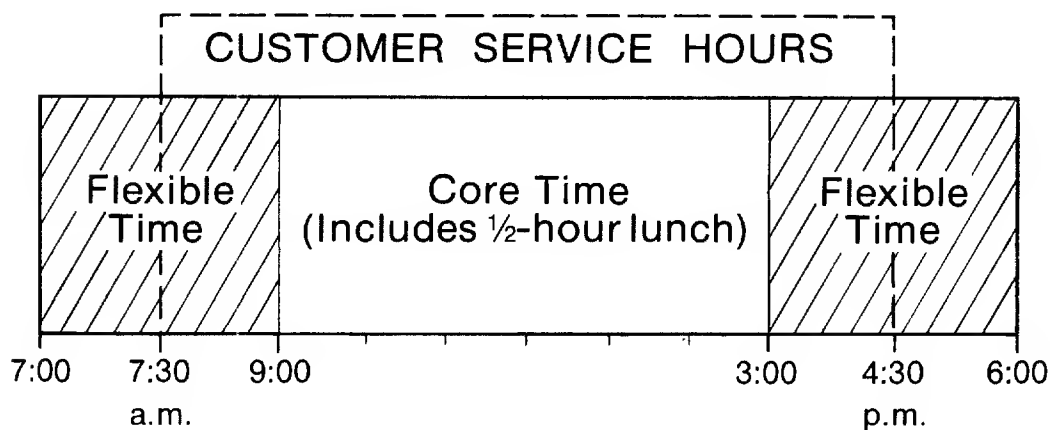
- employee preselects starting time
- may select new schedule at time intervals provided by program

Modified Flexitour

- same as above but schedule may be modified with prior notification and approval of supervisor

(2) Gliding Schedule/Modified Gliding Schedule

Gliding/Modified Gliding



Gliding Schedule

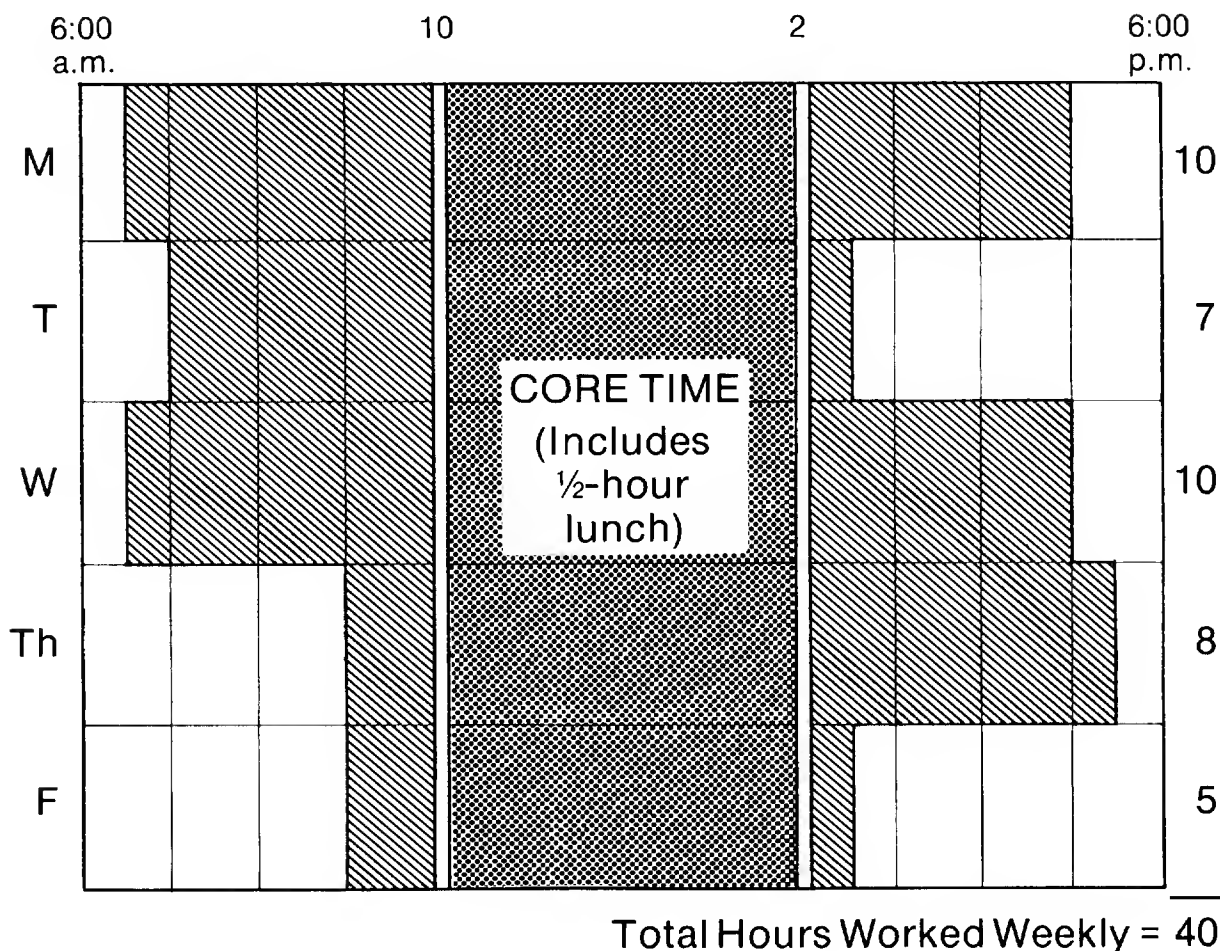
- within flexible bands, employees may vary starting time without prior notification or approval of the supervisor

Modified Gliding Schedule

- 9-hour customer service band established
- employees may vary starting time but must insure minimum coverage level is maintained during customer service hours

(3) Variable Day

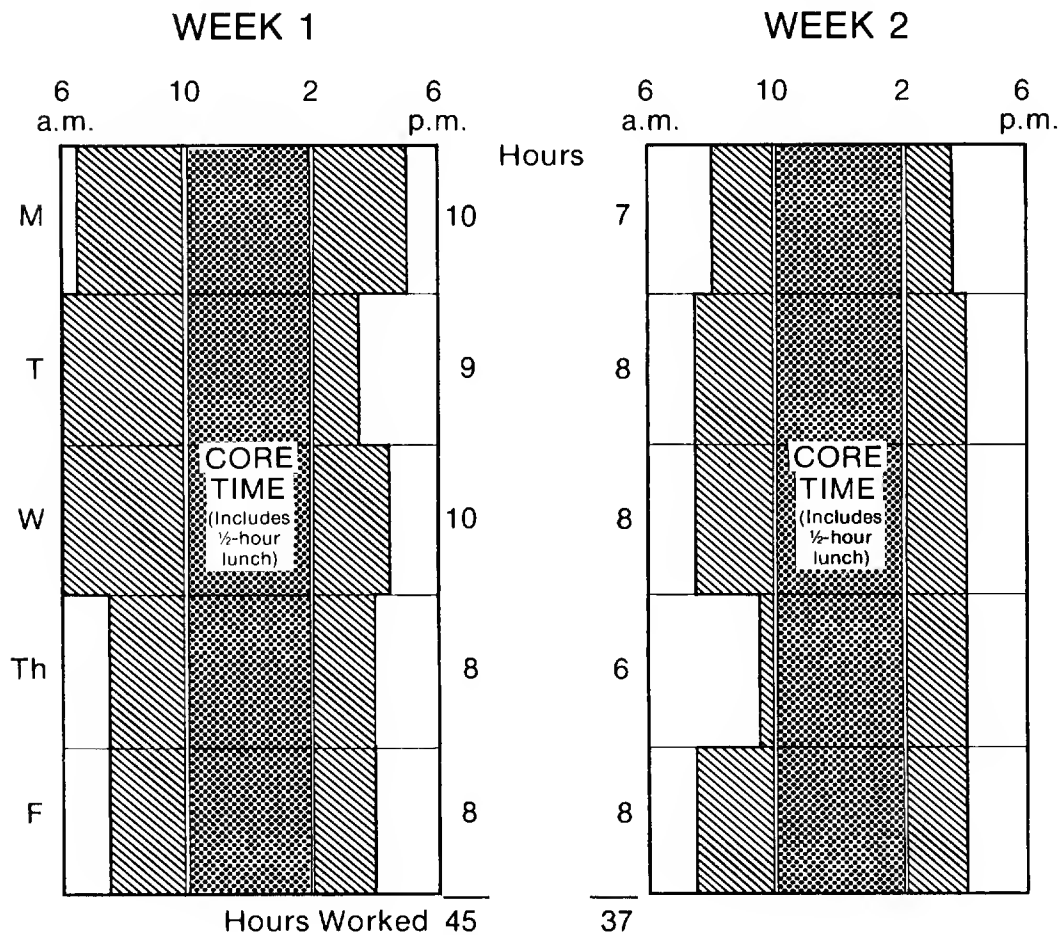
Variable Day



- employee may vary the length of the workday as long as he/she is present for core time within limits established by organization
- must work or account for the basic work requirement, e.g., 40 hours for a full-time employee
- credit hour accumulation is limited to a maximum of 10 hours

(4) Variable Week

Variable Week



Total Hours Worked Biweekly = 45 + 37 = 82

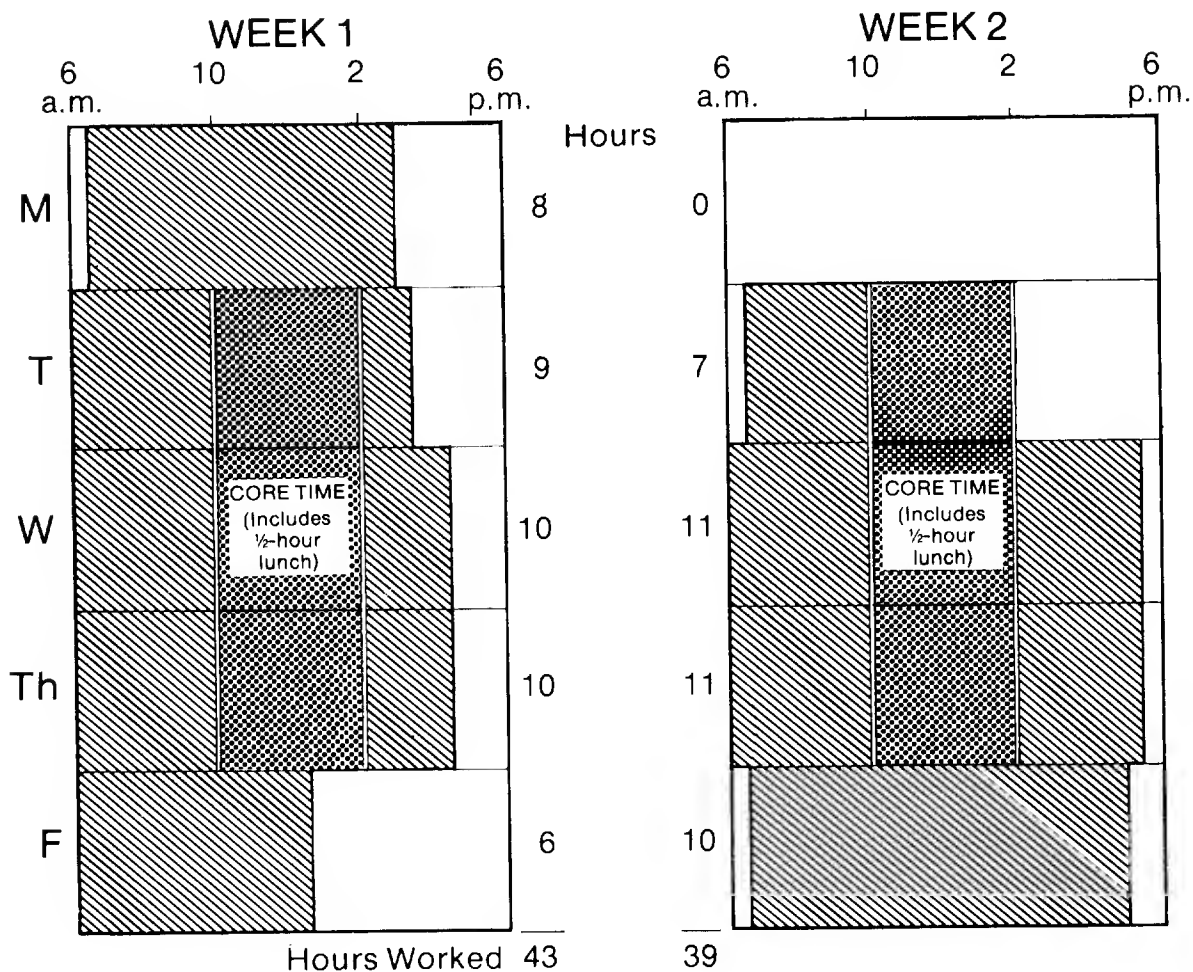
Basic Work Requirement = 80

2 credit hours remaining

- employee may vary the length of the day and the workweek as long as he/she is present for core time
- must work or account for the basic work requirement, e.g., 80 hours each biweekly pay period for a full-time employee
- credit hour accumulation for carryover to a succeeding pay period is limited to a maximum of 10 hours by the Act, or to such lesser amount as determined by the organization

(5) Maxiflex

Maxiflex



Total Hours Worked Biweekly = 82

Basic Work Requirement = 80

2 credit hours remaining

- employees must be present for core days as well as core hours
- basic work requirement is 80 hours each biweekly pay period
- credit hour accumulation is limited to a maximum of 10 hours

D. Compressed Schedules

Like flexible schedules, compressed work schedules may also take a variety of forms. The most common compressed schedule is the 4-day week, referred to as the 4/40 schedule. However, a compressed schedule is any schedule which enables the full-time employee to complete the basic work requirement of 80 hours in less than ten full work days in each biweekly pay period. For employees working under compressed schedules overtime pay will continue to be paid for overtime hours which are officially ordered by an agency official and which exceed the basic work requirement. While compressed schedules have not generally been used in Federal agencies, private sector firms have used such schedules in computer operations, and to increase service to their customers (e.g., by splitting the workforce with some employees working Monday through Thursday and others working Tuesday through Friday, an organization could be open to serve the public by two additional hours each day).

(1) Three-Day Compressed Schedule

3-Day Week

		HOURS WORKED
M	GROUP A	13 hours, 20 minutes
T	GROUP A	13 hours, 20 minutes
W	GROUP A	13 hours, 20 minutes
Th	GROUP B	13 hours, 20 minutes
F	GROUP B	13 hours, 20 minutes
S	GROUP B	13 hours, 20 minutes

Total Hours Worked Weekly, GROUP A = 40

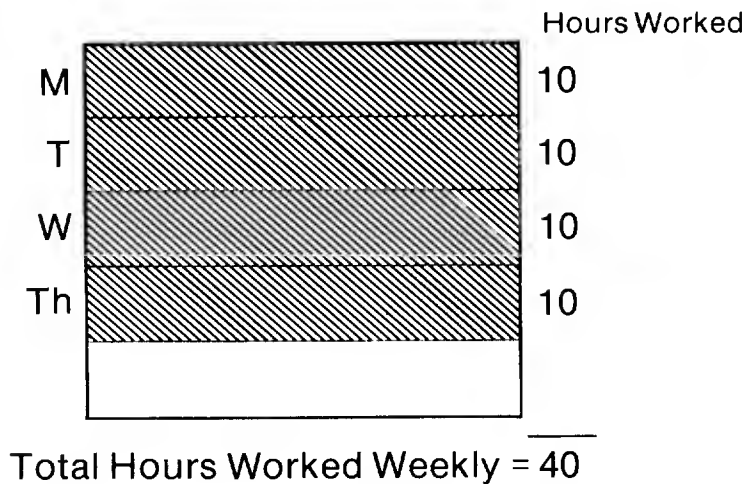
Total Hours Worked Weekly, GROUP B = 40

-full-time employees work 40 hours, 3 days each week

-basic work requirement is 13 hours, 20 minutes each day
and 40 hours each week

(2) Four-Day Compressed Schedule

4-Day Week

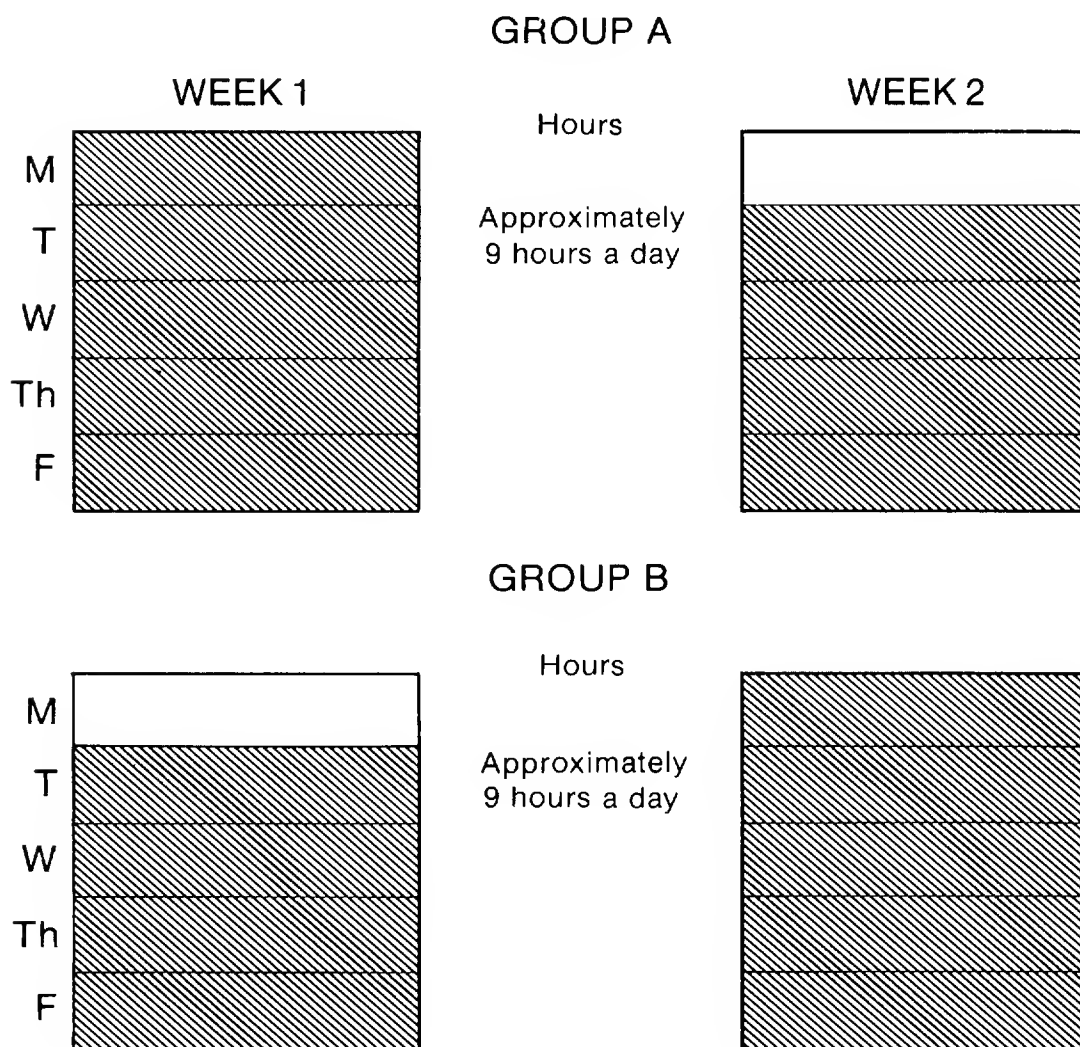


-full-time employees work 40 hours, 4 days each week

-basic work requirement is 10 hours each day and 40 hours each week

(3) 5-4/9 Plan

5-4/9 Plan



Total Hours Worked Biweekly, Group A = 80

Total Hours Worked Biweekly, Group B = 80

-full-time employee works 80 hours for the biweekly pay period
5 days one week and 4 days the next week

-basic work requirement is 80 hours every two weeks.